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Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

APR - 7 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Written Ex Parte in CS Docket No. 02-52

Dear Ms. Dortch:

On January 28, 2003, the High Tech Broadband Coalition ("Coalition") filed a written ex parte in the above-referenced proceeding that contains a number of inaccurate assertions about various provisions included in the subscriber agreement between Cox Communications, Inc. ("Cox") and its high-speed Internet access service customers. To correct the record, I am attaching hereto a point-by-point response to the Coalition's inaccurate claims. Contrary to the Coalition's assertions, Cox's business practices are customer-friendly and are designed to optimize each consumer's broadband experience and ensure effective network management. In no event do those practices raise concerns that warrant regulatory oversight, let alone regulatory intervention.

As NCTA and others have stated repeatedly in this proceeding,¹ requests that the Commission impose burdensome rules on broadband service providers to "prevent" a series of purely speculative harms is a prophylactic in search of a problem. Such an interventionist approach is unnecessary. Indeed, it would be affirmatively harmful. As Congress *has* recognized, the Internet must be permitted to develop "unfettered by Federal or State regulation" if it is to reach its full potential. 47 U.S.C. § 230(b). Dictating the terms on which broadband services must be provided (by, for example, imposing a nebulous "nondiscrimination" requirement) inevitably would prevent service providers from experimenting with different offerings and applications, to consumers' detriment. Rather than responding directly to market forces, service providers saddled with such a requirement would spend their days litigating the question of whether each and every one of their business practices was or was not "discriminatory" in the eyes of some complainant.

¹ See, e.g., NCTA Reply Comments (filed August 6, 2002); Reply Comments of Comcast Corporation (filed August 6, 2002); and Letter from Robert Sachs, President and CEO, NCTA, to Chairman Michael K. Powell (filed December 10, 2002).

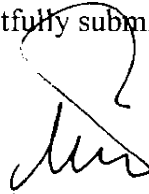
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The record in this and related proceedings establishes that the Internet access marketplace, particularly with respect to broadband, is vibrantly competitive, dynamic and immature. Cox and other broadband service providers continue to refine their offerings to better respond to consumer demand, and continue to pursue relationships, on reasonable commercial terms, with other service providers, including unaffiliated Internet service providers. In the complete absence of any identifiable market failure, it would be extremely counterproductive to consumer welfare for the Commission to intervene in these efforts, which are being driven entirely by competitive marketplace forces. It is ironic that this surely would be the very principle the Coalition's member companies would embrace if others began clamoring for government intrusion into their own high tech businesses.

Should questions arise with respect to this filing, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alex', written over a circular stamp or seal.

Alexander V. Netchvolodoff

cc: Barhat-a Esbin
Sarah Whitesell (2 copies)
Linda Scnechal (2 copies)
Qualex International (2 copies)

COX COMMUNICATIONS, INC.
RESPONSE TO HIGH TECH BROADBAND COALITION
ALLEGATIONS OF JANUARY 28.2003

- (1) COALITION ASSERTION 1: "Broadband providers are prohibiting consumers from using the broadband network *to send or receive* certain types of data: Cox; *You agree not to use the Service for operation as an Internet service provider, or for any other business enterprise, including, without limitation, virtual private network usage, IP address translation or similar facilities intended to provide additional access. COX Subscriber Agreement, Sec. 5. . . .*"

Response: The text cited does not prohibit customers from sending or receiving different types of data. Rather, the provision merely restricts customers of Cox's residential high speed Internet access service from using that service for commercial uses. In the event that customers do want to use Cox services for commercial purposes, they have the option to purchase a commercial grade service from Cox Business Services at a slightly higher price point. The commercial grade service provides additional functionality, including a transparent LAN service ("TLS"), through which Cox creates a capability that looks and acts like a transparent local area network. The TLS feature allows commercial customers to access different business locations and allows the local business to avoid worry about the need for encryption. The higher price point for Cox's commercial grade service also reflects the assumed increased burden on the network that will be caused by higher volume commercial uses and customer service requirements. It is consistent with other well-established telecommunications marketplace practices, which establish different rates for residential and commercial lines.

- (2) COALITION ASSERTION 2: "Broadband providers are charging consumers more for sending or receiving certain types of data traffic: COX; *You may incur charges, including without limitation, charges relating to the purchase of premium services, such as additional web space, business class services or access to certain gaming sites in addition to those billed by Cox. COX Subscriber Agreement, Sec. 2.*"

Response: The Coalition misinterprets the plain meaning of the provision it cites. First, the Coalition insinuates that Cox charges customers for accessing certain gaming sites. This claim is incorrect. In fact, the *text* of the provision simply warns customers that they may incur **third party** charges by accessing certain sites or purchasing certain services. It is designed to advise customers that they, not Cox, are responsible for paying any fees charged by these premium sites or for any of these premium services. The provision is akin to provisions disclaiming Cox responsibility for the content

that customers access on third party web sites, except the disclaimer is of economic, not editorial, responsibility. The provision is customer-friendly because it informs customers that third party fees will, as a matter of law, be their responsibility. It does not, as the Coalition suggests, indicate that Cox currently charges customers additional fees for accessing certain content or data.

The Coalition also appears to claim that Cox is not entitled to charge customers for certain premium services, such as additional storage capacity or additional web space (over and above that provided as part of Cox's standard residential Internet access offering). This claim has no legal or policy basis whatsoever. Cox is entitled to seek additional compensation from customers to whom it provides additional services.

(3) COALITION ASSERTION 5: "Broadband providers have written agreements that permit future discrimination. COX: Management of Network. Cox reserves the right to manage its network for the greatest benefit of the greatest number of subscribers including, without limitation, the following: rate limiting, rejection or removal of spam or otherwise unsolicited bulk email, traffic prioritization and protocol filtering. You expressly accept that such action on the part of Cox may affect the performance of the Service. COX Subscriber Agreement, Sec. 15. Bandwidth, Data Storage and Other Limitations. You must comply with the current bandwidth, data storage and other limitations on the Service. You must ensure that your activities do not improperly restrict, inhibit, or degrade any other user's use of the Service, nor represent (in the sole judgment of Cox) an unusually large burden on the network itself. In addition, you must ensure that their activity does not improperly restrict, inhibit, disrupt, degrade or impede Cox's ability to deliver the Service and monitor the Service, backbone, network nodes, and/or other network services. Cox may terminate, suspend or require you to upgrade the Service and pay additional fees if Cox, in its sole discretion, determines that you are using excessive bandwidth." (Emphasis in original)

Response: The Coalition's claim that provisions in Cox's subscriber agreements permitting Cox to manage its network amount to a grant of permission for future "discrimination" is simply absurd. The provisions cited by the Coalition clearly are designed to give Cox the flexibility to make adjustments necessary to ensure that the quality of its high speed Internet access service meets the expectations of its customers. Due to the shared nature of Cox's network, excessive use by one or a small group of customers can have a negative impact on the quality of service that other customers receive. As a consequence, Cox must have the right to make adjustments to its network and service from time to time to address these issues.

There similarly is nothing nefarious about Cox's statement that it may impose data storage limitations on the network. In challenging this practice, the Coalition ignores the fact that data storage capacity costs money, and that if Cox were to construct a network that accommodated unlimited storage for all customers, the service would become prohibitively expensive for any one customer. Instead, Cox provides reasonable storage capacity for customers and may, in some cases, make additional storage capacity available at a charge. Putting customers on notice of these terms upfront is simply a good, honest business practice.

Finally, the Coalition refuses to acknowledge the fact that the business of providing high speed Internet access is evolving, as is the manner in which customers use the service. As a result, Cox must retain flexibility to address this technical and business evolution. To claim that these provisions "permit" future discrimination is disingenuous.